

**IN THE HIGH COURT OF JUDICATURE AT BOBBY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.189 OF 2007**

M/s.Noble Asset Co.Ltd. .. Petitioner.
Versus
Essar Oil Ltd. .. Respondents.

Mr.E.P.Bharucha a/w.Mr.G.Joshi i/b.Mulla & Mulla
for petitioner.

Mr.J.J.Bhat with Mr.Vipin Jain, Mr.Vikram
Nankani i/b.P.K.Shetty for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 21st September, 2007.

P.C.

1. The petitioner seeks the following
reliefs :-

(a)(i) The respondent be ordered and directed by this Hon'ble Court to procure discharge, release and return to the petitioner the Bank Guarantee No.GTEBOM010302 dated 19th April, 2001 for Rs.15 Crores and Bond dated 16th May, 2001 for Rs.97 Crores to the petitioner for cancellation;

(a)(ii) That the respondent be ordered and directed to furnish security including an appropriate Bank Guarantee from a Bank acceptable to this Hon'ble Court in the pending Customs Appeal No.12 of 2007 in favour of the Commissioner of Customs (the Custom Authority herein) in place and instead of the security furnished by the petitioner as described in prayer (a)(i)."

2. The petition is under Section 9 of the Arbitration and Conciliation Act, 1996.

3. Mr.Bharucha, learned senior counsel appearing for the petitioner does not dispute that the Bank Guarantee which has been given on 16th May, 2001, together with the Bond was subject matter of challenge in proceedings before the Commissioner of Customs and thereafter in Appeal before the Central Excise and Service Tax Appellate Tribunal (CESTAT, for short).

4. The CESTAT by its order dated 19th August, 2005, allowed the Appeal of the petitioner and set aside the order and direction of the Commissioner of Customs dated 23rd March, 2005.

5. Against the order passed by the CESTAT,

the Customs Department has preferred an Appeal being Customs Appeal No.12 of 2007, which is pending for hearing and final disposal in this Court. During the course of the hearing of this Appeal, this Court has directed that the petitioner before it should not seek cancellation of the Bank Guarantee until further orders are passed.

6. In my view, whether the respondents are liable to make good the sum of Bank Guarantee furnished by the petitioner to the Customs Department based on the clauses of the Agreement between the petitioners and respondents is the pending issue wholly dependant upon the outcome of the Customs Appeal. Parties have by consent agreed not to proceed with the arbitration pending the decision on the Customs Appeal. In such circumstances, entertaining this petition would not be proper. In fact, the petition is

pre-mature. In the event, the order of C.E.S.T.A.T. is reversed, the petitioners are always at liberty to revive their request for interim measures either before this Court or before the Arbitral Tribunal. Thus, disposing of this petition as pre-mature does not mean that this Court has in any manner pronounced upon the validity and legality of the rival contentions. The petition is disposed of as pre-mature with liberty to the petitioners to revive their request, in the event, the decision in the Customs Appeal is adverse to them. Needless to state that even before the Arbitral Tribunal, without prejudice statements are recorded and the proceedings before the Arbitral Tribunal are stayed only because the Judgement of the C.E.S.T.A.T. is under appeal.

7. Petition is disposed of as pre-mature with liberty as above.

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(S.C.Dharmadhikari, J.)